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No. 00-152

Supreme Court, U.S.
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In The

Supreme Court of the United States

October Term, 2000

VICTORIA L. BRADSHAW, an individual, in her official capacity as Labor Commissioner of the State of California; LLOYD W. AUBRY, JR., an individual, in his official capacity as Director of the Department of Industrial Relations of the State of California; DANIEL DELLAROCCA, an individual, in his official capacity as Deputy Labor Commissioner of the State of California; ROGER MILLER, an individual, in his official capacity as Deputy Labor Commissioner of the State of California; ROSA FRAZIER, an individual, in her official capacity as Deputy Labor Commissioner of the State of California; DIVISION OF LABOR STANDARDS ENFORCEMENT, an agency of the State of California' DEPARTMENT OF INDUSTRIAL RELATIONS, an agency of the State of California

Petitioners,

v.

G & G FIRE SPRINKLERS, INC.,

Respondent.

On Petition For A Writ Of Certiorari
To The United States Court Of Appeals
For The Ninth Circuit

OPPOSITION TO MOTION FOR LEAVE TO FILE BRIEF OF AMICI CURIAE

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Respondent G & G Fire Sprinklers, Inc. ("G&G") submits that the motion for leave to file brief of *amici curiae* by the Port of Oakland and ten California cities, should be denied.

The proposed *amici curiae* brief does not address an issue presented by this case.

Counsel for the *amici curiae*, and for Petitioners, have been misstating the issue in the case, in an effort to evade the merits. The proposed *amici curiae* brief contends that the case addresses whether an ordinary contract dispute gives rise to a due process claim. See, proposed *amici curiae* brief, p. 3, fn. 2. No such issue was raised by the case. The Ninth Circuit expressly stated that such an issue was not raised by the case. The irrebuttable facts, and state law, establish that no such issue was raised by the case.

While this action was pending in the Ninth Circuit, counsel for *amici curiae* was provided with detailed explanations, and briefs, which establish that this case does not concern an ordinary contract dispute. Nevertheless, the *amici curiae* brief fails to even address the issue. The proposed *amici curiae* brief, and the petition for writ of certiorari, both engage in mere hand-waving. The *amici curiae* brief simply asserts that this action involves a mere breach of contract, without setting forth any facts or law to support the contention. Overwhelming facts, and state law, which lead the District Court and the Ninth Circuit to conclude otherwise, is completely ignored by *amici curiae*.

Implicitly, the *amici curiae* concedes that an argument on the merits, under the actual facts of this case, is devoid of merit. In fact, such an argument would be directly inconsistent with long-standing precedents of this Court. See, e.g., Fuentes v. Shevin, 407 U.S. 67, 32 L.Ed. 556, 92 S.Ct. 1983 (1972); Sniadach v. Family Finance Corp. 395 U.S. 337, 23 L.Ed.2d 349, 89 S.Ct. 1820 (1969); United States v. James Daniel Good Real Property, 510 U.S. 43, 114 S.Ct. 492, 126 L.Ed.2d 490 (1993); Goldberg v. Kelly 397 U.S. 254, 25 L.Ed.2d 287, 90 S.Ct. 1011 (1970); Mathews v. Eldridge 424 U.S. 319 (1976).

The *amici curiae* brief seeks to confuse the Court as to the issues in the case, in an effort to evade the merits of the case. Accepting a petition for writ of certiorari on an issue which does not

exist in the case would embroil the Court in factual issues regarding state law. The *amici curiae* sets forth no argument whatsoever to dispute the conclusion of the Ninth Circuit on this issue. The *amici curiae* sets forth no argument to support its contention as to the issue in this case, because none exists. The failure of the *amici curiae* to set forth any argument in support of its contention that this case concerned an ordinary breach of contract constitutes an admission, that no such argument can be made.

The proposed *amici curiae* brief refers to dissent by Judge Kozinski. The dissent by Judge Kozinski engages in the same evasion of the issues as the petition, and proposed *amici curiae*. The dissent merely asserts, in an exercise of hand-waving, that the case concerns an ordinary breach of contract by a governmental entity engaging in commercial activity. The dissent sets forth no facts, or analysis of state law to support the assertion. The dissent asserts a breadth to the majority opinion, which cannot possibly be derived from the terms thereof. In fact, the majority opinion expressly states that this case does not involve a contractual dispute.

The *amici curiae* further raises a non-existent issue, by asserting that prior cases have held that a public contract does not create a property interest. This is not the law. Rather, the courts have held that a mere breach of a public contract does not constitute the deprivation of a property interest. It is axiomatic that money due under a contract is a property interest. In fact, it is one of the oldest and most fundamental types of property interests recognized in the United States of America. If there is no property interest in money due under a contract, then a writ of attachment could be issued without due process. Similarly, the federal government could assess civil penalties for alleged violations of federal law, and seize money due under a public works contract with a municipal entity, without due process. Clearly, due process is required for such a seizure. See, United States v. James Daniel Good supra.

The proposed *amici curiae* brief sets forth no facts, or law, to support the contention that this case concerns a mere breach of contract. Rather, the proposed brief completely evades the issue. This

case involves state law enforcement activity. There is a clear distinction between a contractual relationship, which involves a mutuality of obligations, and panoply of contract remedies, on the one hand; and state law enforcement activity, on the other hand.

The motion for leave to file *amici curiae* brief should be denied.

Respectfully submitted,

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